IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 2535 of 1999

Between:

Kshatriya Jagat Singh, S/o. Koti Singh.
R/o. Sathupally, Khammam District.

..... PETITIONER

AND

1 The Dy.Secretary to the Government of India,
Ministry of Home Affairs (FFD), Loknayak Bhavan, 1st Floor,
Khan Market, New Delhi-110 003.
2 The Under Secretary, Government of India.
Ministry of Home Affairs (FFD),

1st Floor, Loknayak Bhavan, Khan Market,

New Delhi-110 003.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of respondents No.1 in issuing the notice dated 04/02/1998 in the light of the explanation given by the petitioner and the consequential proceedings of the respondents No.1 in No.112/3/95-FF(HC) dated 29/01/1998 as highly illegal, arbitrary, unjust, improper and consequently set aside the same.

Counsel for the Petitioner:MR.BADANA.BHASKARA RAO

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

ORDER:

The petitioner herein claims to be a freedom fighter. He applied for Freedom Fighters Pension (FF Pension) under Swatantrata Sainik Samman Pension Scheme, 1980 (for short, the Scheme). Alleging that his claim was not considered, he filed a Writ Petition being W.P.No.13957 of 1989. This Court disposed of the said Writ Petition on 28.9.1993 directing the Government of India to verify and examine the application of the petitioner for sanction of FF Pension duly affording an opportunity to him, within three months. The petitioner filed a Contempt Case being C.C.No.709 of 1994 complaining that the orders of this Court in Writ Petition No.13957 of 1989 have been disobeyed. This Court disposed of the Contempt Case on 3.11.1995. Thereafter, the Government of India, in Ministry of Home Affairs, issued orders dt.13.12.1995 provisionally sanctioning pension of Rs.500/- (Rupees five hundred only) per month to petitioner with effect from 14.7.1986. The Deputy Secretary to the Government of India, in the Ministry of Home Affairs, issued a show cause notice to petitioner on 4.2.1998 calling upon him to show cause as to why FF Pension sanctioned to him should not be suspended/cancelled, and recovery of pension should not be made. It was alleged therein, the petitioner furnished incorrect or false information and therefore the FF Pension is liable to be cancelled. The petitioner submitted explanation and after considering the explanation by order dt.29.1.1998 the Deputy Secretary to the Government of India informed that the payment of pension to the petitioner be suspended forthwith until further orders. This order is assailed in the Writ Petition.

The Under Secretary, in the Ministry of Home Affairs, Government of India, New Delhi, filed a counter affidavit opposing the Writ Petition. It is stated that the petitioner claimed that he suffered underground for about ten months in border camp during 1947-48. The petitioner produced copies of Court record allegedly issued by Court of Munsif Magistrate, Khammam, in Case No.43/1/1357 Fasli. The matter was

referred to State Government for necessary verification as required under the Scheme. As the verification report from the State Government was not received, the Ministry of Home Affairs could not take a decision. In the meanwhile, petitioner filed a Writ Petition and a Contempt Case. In view of the fact that petitioner filed Contempt Case, being C.C.No.709 of 1994, pension was sanctioned vide letter dt.13.12.1995 subject to review on receipt of the verification report from the State Government. The District & Sessions Judge, Khammam, after verifying the Court document sent a communication dt.28.6.1997 to the effect that the entries in the Court record were interpolated. Accordingly, payment of pension to petitioner was suspended and a show cause notice dt.4.2.1998 was issued for cancellation. The petitioner has submitted explanation which was received on 11.3.1998 and the same is under consideration.

Learned counsel for the petitioner, Sri Badana Bhaskara Rao, strenuously contends that the petitioner is a genuine freedom fighter. He enclosed a certificate issued by camp in-charge Sri Rangapuri Raghavadas, obtained notarized affidavits of other freedom fighters in Chanubanda camp and claimed pension. The petitioner was also allotted Acs.10.00 of land as freedom fighter. Considering all these documents, pension was sanctioned to him, and hence action now initiated for cancellation of the pension, based on the report of the District & Sessions Judge, Khammam, is violative of principles of natural justice and fairness.

Along with the counter affidavit, a brief note on Swatantrata Sainik Samman Pension Scheme, 1980 is annexed. As per these, the following category of freedom fighters are eligible for FF Pension under the Scheme.

i. Eligible dependents of **martyrs**. A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India.

ii. A person who had suffered **minimum imprisonment of six months** (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle.

iii. A person who on account of his participation in freedom struggle remained **underground** for more than six months provided he was;

   a. a proclaimed offender; or

   b. one on whom an award for arrest was announced; or

   c. one for whose detention, order was issued but not served.

   Note: - Voluntary underground suffering or self exile suffering for party work under the command of the party leaders, are not covered as eligible sufferings for pension under the Scheme

iv. A person who, on account of participation in the freedom struggle, was **interned** in his home or **externed** from his district for a minimum period of 6 months.

v. A person whose **property** was **confiscated** or attached and sold due to participation in the freedom struggle.

vi. A person who on account of participation in freedom struggle, became **permanently incapacitated** during firing or lathi charge.

vii. A person who **lost his Govt. job** for participation in freedom struggle.

viii. A person who was awarded the punishment of 10 strokes of **caning/flogging/whipping** due to his participation in freedom struggle.

As per the scheme, persons who considered themselves eligible, should apply in duplicate in prescribed form. One application should be sent to the Chief Secretary of the concerned State, and second copy should be sent to Deputy Secretary to Government of India, as advance copy. The Government of India would process the claims only on receipt of verification and entitlement to pension report from the State Government. A person so as to be eligible for the pension has to enclose evidence to prove that he suffered during freedom struggle. The evidence required is as under.

(A) Claim of Jail Sufferings:-

(i) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. **OR**

(ii) In case records of the relevant period are not available, a non-availability of records certificate (**NARC**) from the concerned State/Union Territory Administration along with 2 co-prisoner certificates (**CPC**) from freedom fighters who have proven jail sufferings of minimum 1 year and who were with the applicant in the jail.

In case the certifier happens to be a sitting or Ex.M.P./M.L.A., only one certificate in place of the two is required.

(B) Claim of underground Sufferings:-

(i) Documentary evidence by way of Court's Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. **OR**

(ii) In case records of the relevant period are not available, a non-availability of records certificate (**NARC**) from the concerned State/Union territory Administration along with a personal Knowledge certificate (**PKC**) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit.

The petitioner claimed that he suffered imprisonment and was in camp and therefore he produced copies of Court record issued by the Court of Munsif Magistrate, Khammam. When the same was under verification by the officials of the State Government, the Central Government sanctioned pension as the petitioner filed the Contempt Case.

A copy of the order dt.13.12.1995 issued/passed by Deputy Secretary to

Government of India, in Ministry of Home Affairs sanctioning pension is not enclosed. The petitioner has also not denied the counter averment that pending further verification of receipt of "entitlement to pension report" pension was sanctioned subject to condition that the same will be reviewed after receiving such report. Therefore, it may be presumed that pension was granted subject to further review by the Government. The District & Sessions Judge, Khammam, sent a report by way of letter bearing Lr.Dis.No.2957/P.R.No.106/94/ADM/DCK, dated 28.6.1997 to the Under Secretary, which reads as under.

Sir,

Sub:- Verification of Court document in Case No.43/1/1357 F issued by Munsif Magistrate's Court, Khammam – Reg.

Ref:- Your letter No.52/CC/350/96-FF(P) HC, dt.8.4.1997.

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While returning herewith the Xerox Copy of Urdu document (i.e., Index Sheet) with its English translation received in your letter cited, I am to inform that the hand-writing to the extent of all the names, in Col.No.4 in the proforma rounded off with red-ink in the enclosed copy is quite different than the hand-writing in other columns.

Obviously, all the names of accused found written in Col.No.4, are subsequently inserted.

Yours faithfully,

Sd/-

District and Sessions Judge,

Khammam.

The same would disclose that in the Court record of the Court of Munsif Magistrate, Khammam, the name of petitioner was subsequently inserted. This would lead to a conclusion that the pension was sanctioned vide letter dt.13.12.1995 on a misrepresentation, and it was always competent to the Central Government to withdraw the pension which was obtained by misrepresentation and fraud. Therefore, a show cause notice was issued. In that view of the matter, I do not see any infirmity or illegality or arbitrariness in the Central Government issuing the show cause notice to petitioner. The petitioner submitted explanation and even before appropriate orders could be passed, he approached this Court and obtained interim orders. It is unfortunate that the sacred policy of granting pension to freedom fighters and their families under the Swatantrata Sainik Samman Pension Scheme is misused by unscrupulous persons by producing false and forged documents. It shall be open to the Government of India to pass appropriate orders.

The Writ Petition is accordingly dismissed with costs.

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(V.V.S.RAO, J)

29.7.2004

bnr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Dy.Secretary to the Government of India,
Ministry of Home Affairs (FFD), Loknayak Bhavan, 1st Floor,
Khan Market, New Delhi-110 003.
2 The Under Secretary, Government of India.
Ministry of Home Affairs (FFD),

1st Floor, Loknayak Bhavan, Khan Market,

New Delhi-110 003.

3 2CCs to Sri A.Rajasekhar Reddy, SC for Central Government (OUT)

4 2CD copies